

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
OCT 16 2012

JAMES W. McDORMACK, CLERK
By: *James W. McDormack*
DEP. CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LARRY BUNDY and
RHONDA "BABE" BUNDY

vs.

CASE NO.

PLAINTIFFS

3:12-cv-00240

BRW/BD

DAVID HAWKINS; and
UPS GROUND FREIGHT, INC.

DEFENDANTS

COMPLAINT

COME NOW Plaintiffs Larry Bundy and Rhonda "Babe" Bundy, by and through their attorneys, McDaniel & Wells, P.A., and for their Complaint against Defendants, state:

1. That at the time of the occurrence referred to herein and at the time of filing this action, Plaintiffs were and are residents of the State of Texas.
2. That at the time of the occurrence referred to herein, Defendant Hawkins was a resident of Monette, Craighead County, Arkansas. At the time of filing and upon information and belief, Defendant Hawkins is a resident of Blytheville, Mississippi County, Arkansas.
3. That at the time of the occurrence referred to herein and at the time of filing this action, Defendant UPS Ground Freight, Inc., hereinafter

“UPS Ground,” was/is a foreign corporation authorized to do business in the State of Arkansas.

4. That the mailing address for Defendant UPS Ground is 100 Semmes Avenue, Richmond, Virginia 23224.

5. That, upon information and belief, the registered agent for service of Defendant UPS Ground is the Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas 72201.

6. That at the time of the occurrence referred to herein, Defendant Hawkins was driving a tractor trailer truck owned by UPS Ground Freight, Inc.

7. That at the time of the occurrence, Defendant Hawkins’ vehicle carried a UPS Ground Freight, Inc. logo conspicuously posted on the side(s).

8. That at the time of the occurrence, Defendant Hawkins was the agent, servant and/or employee of Defendant UPS Ground.

9. That at the time of the occurrence referred to herein, Defendant Hawkins was in the course and scope of his employment and/or agency relationship with Defendant UPS Ground.

10. That this Court has subject matter jurisdiction over this cause as there is complete diversity of citizenship and the amount in controversy exceeds the minimum amount for federal diversity citizenship, i.e., greater than \$75,000. 28 U.S.C.A. § 1332(a).

11. That this Court has personal jurisdiction over the parties hereto.

12. That this Court is the proper venue for this action as Defendant Hawkins, at the time of the occurrence and currently, resides in this District and personal jurisdiction over Defendant UPS Ground exists in this District. 28 U.S.C.A. § 1391(b).

13. That on or about October 22, 2009, at approximately 12:45 p.m., a collision occurred involving the vehicle driven by Plaintiff Rhonda Bundy and the tractor-trailer driven by Defendant Hawkins. Just prior to the wreck, the Bundy vehicle was traveling in the inside lane of I-30, westbound, near Malvern, Arkansas. Upon slowing for congested traffic in front, Plaintiffs' vehicle was struck in the rear by Defendant Hawkins, also traveling westbound on I-30 in the inside lane.

14. That the collision out of which this cause accrues occurred as a proximate result of the negligent conduct of Defendant Hawkins, which is imputed to Defendant UPS Ground in particulars including, but not limited to, the following:

- a. That Defendant Hawkins failed to operate his vehicle at a reasonable speed for the circumstances then and there existing;
- b. That Defendant Hawkins failed to maintain a proper lookout under the circumstances then and there existing;

- c. That Defendant Hawkins failed to maintain proper control of his vehicle for the circumstances then and there existing;
- d. That Defendant Hawkins was following Plaintiffs' vehicle too closely;
- e. That Defendant Hawkins failed to yield the right of way; and
- f. That Defendant Hawkins failed to use ordinary care under the circumstances then and there existing.

15. That neither Plaintiff Rhonda Bundy nor Plaintiff Larry Bundy (a passenger in the Bundy vehicle) were guilty of any comparative fault.

16. That no other person, firm, company, corporation, or entity of any type, other than the defendants herein, was negligent or was a contributing proximate cause of damage sustained by the plaintiffs.

17. That the conduct of Defendant Hawkins is imputed to Defendant UPS Ground under the doctrine of respondeat superior, vicarious liability, and/or by federal regulations in that he was the driver for UPS Ground and in the course and scope of his employment.

18. That the conduct of Defendant Hawkins is imputed to Defendant UPS Ground under the doctrine of agency, apparent agency liability, and/or "logo liability."

19. That as a proximate result of the negligence of Defendant Hawkins and/or Defendant UPS Ground, Plaintiff Larry Bundy sustained

injuries to his person, including, but not limited to, injuries to his neck and back which required him to incur expenses for medical care and treatment in the past and in the future; he has endured pain, suffering, discomfort and mental anguish in the past and will endure such in the future; his injuries are permanent in nature; and, for all of which he should have judgment from and against the defendants in an amount to be set by the jury.

20. That as a proximate result of the negligence of Defendant Hawkins and/or Defendant UPS Ground, Plaintiff Rhonda Bundy sustained injuries to her person, including, but not limited to, injuries to her head, neck, back, feet, and lower extremities, which required her to incur expenses for medical care and treatment in the past and in the future; she has endured pain, suffering, discomfort and mental anguish in the past and will endure such in the future; her injuries are permanent in nature; she has lost earnings in the past and will lose earnings in the future; and, for all of which she should have judgment from and against the defendants in an amount to be set by the jury.

21. That Plaintiffs demand a trial by jury.

22. That Plaintiffs reserve the right to amend and plead further in this cause.

WHEREFORE, Plaintiffs pray they have and recover judgment from and against Defendants in an amount to be set by the jury in excess of \$75,000.00

(collectively and/or as to each of their respective claims), and for all other relief to which they may be entitled.

RESPECTFULLY SUBMITTED this 16th day of October, 2012.

MCDANIEL & WELLS, P.A.

/s/ Brett A. McDaniel

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